



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1997

The Honorable David Hammit
Madison County Attorney
101 West Main, Suite 121
Madisonville, Texas 77864-1990

Letter Opinion No. 97-071

Re: If persons other than inmates may purchase
items from a county jail commissary (ID# 39502)

Dear Mr. Hammitt:

You ask if persons other than inmates may purchase items from a county jail commissary. We conclude in the negative based on the commissary's lack of authority to sell items for use by persons other than county prisoners.

A county has only those powers conferred by the Texas Constitution and statutes, either expressly or by necessary implication.¹ Thus, a county jail commissary may sell items to non-inmates only if expressly or impliedly authorized by a constitutional or statutory provision. We have not found nor do you cite us to any such authority.

Local Government Code section 351.0415, adopted in 1989,² is the first and only Texas statutory provision dealing with jail commissaries.³ Such section provides in relevant part as follows:

(a) The sheriff of a county may operate, or contract with another person to operate, *a commissary for the use of the prisoners committed to the county jail*. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards. [Emphasis added.]

¹Tex. Const. art. V, § 18; *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941); *Travis County v. Colunga*, 753 S.W.2d 716, 720 (Tex. App.—Austin 1988, writ denied).

²See Act of May 28, 1989, 71st Leg., R.S., ch. 980, 1989 Tex. Gen. Laws 4056, 4056.

³Letter Opinion No. 96-032 (1996) at 2. The Commission on Jail Standards, however, has had rules in force since 1976, providing for the operation of jail commissaries. See 1 Tex. Reg. 3599 (1976) (commission rule providing that each detention facility was to implement a policy, approved by the commission governing, among other things, commissary privileges) (codified at 37 T.A.C. § 291.3). See also Act of May 30, 1975, 64th Leg., R.S., ch. 480, 1975 Tex. Gen. Laws 1278 (creating commission with authority to establish standards for operations of jails and care of prisoners); Letter Opinion No. 90-42 (1990) (section 341.0415 not necessary to authorize jail commissaries since existing commission rules require county jails to provide a commissary or equivalent); Attorney General Opinion MW-143 (1980) (commission rule providing for operation of commissaries gives sheriffs authority to operate commissaries); Attorney General Opinion C-67 (1963) (although no statutory authority for jail commissary existed at that time, sheriff's authority to supply "wants" of prisoners authorized him to sell toilet articles and other items to inmates).

Section 351.0415(a) does not expressly reference or authorize sales to persons other than inmates. The statute, by its terms, authorizes the operation of a jail commissary "for the use of the prisoners" in the county jail. We construe this phrase to limit the operation of the commissary for the benefit⁴ of the inmates. It is a fundamental rule of statutory construction that effect and meaning be given to each and every sentence, clause, phrase, and word of an act when possible.⁵ It is also a well-established rule of statutory construction that the express enumeration of particular persons or things in a statute is tantamount to an express exclusion of all others.⁶ Thus, persons other than prisoners are excluded from the category of persons for whose use a county jail commissary is operated. Accordingly, by virtue of the express language of section 351.0415(a), the commissary is not authorized to sell items for the use of persons other than prisoners under section 351.0415(a).

Nor can authority to sell items for use by non-inmates be implied from the authority to operate a jail commissary. A county has such implied powers as are necessary to exercise the powers expressly conferred.⁷ Sale of items for use by non-inmates is not necessary to the operation or function of a county jail commissary.

The above construction of section 351.0415(a) as providing for sale of items only for the use of inmates is supported by the Commission on Jail Standards' rule with respect to county jail commissaries, which reads:

Each facility shall have and implement a written plan, approved by the commission, governing the availability and use of an *inmate* commissary which allows for the *purchase of hygiene items and sundries*. The plan shall:

- (1) indicate the type of services, in-house or vendor;
- (2) indicate frequency of services;
- (3) provide procedures for *inmates obtaining* items;

....

37 T.A.C. § 291.3 (emphasis added). First, the rule does not expressly reference or authorize purchases by other than inmates. Secondly, it does not contemplate that the commissary will sell

⁴See BLACK'S LAW DICTIONARY 579-80 (5th ed. 1979) (defining "for" as "[b]y reason of; with respect to; for benefit of; for use of; in consideration of"), 1382 (defining "use" as "[t]he purpose served; a purpose, object or end for useful or advantageous nature").

⁵67 TEX. JUR. 3D *Statutes* § 124 (1989).

⁶*Ex parte McIver*, 586 S.W.2d 851, 856 (Tex. Crim. App. 1979) (superseded by statute on other grounds as stated in *Ex parte Johnson*, 697 S.W.2d 605 (Tex. Crim. App. 1985)); see also 67 TEX. JUR. 3D *Statutes* § 119 (1989).

⁷*Anderson*, 152 S.W.2d at 1085; *Colunga*, 753 S.W.2d at 720.

items for the use of persons other than inmates. The facility is described as an "inmate commissary," which allows for the purchase of hygiene and similar items which only inmates would reasonably require. Additionally, procedures required under the plan deal only with inmates obtaining items from the county jail commissary.

Although you do not indicate, we assume for the purposes of this opinion that the purchases at issue are not for the benefit of the inmates. Based on this assumption, we conclude that persons other than inmates may not purchase items from the county jail commissary.

S U M M A R Y

Persons other than inmates may not purchase items from a county jail commissary when the purchases are not for use of the inmates.

Yours very truly,

A handwritten signature in cursive script that reads "Sheela Rai".

Sheela Rai
Assistant Attorney General
Opinion Committee